exclude the jurisdiction. Equity will further infer an intention that time should be of the essence from what has passed between the parties prior to the signing of the contract."

In *S. Ayadurai* v. *Lim Hye*[7] it was held among other things that

"although a determinable date ostensibly obligatory was fixed for completion, the nature of the property is such that time for payment of the balance of the purchase price cannot be deemed to be of the essence of the contract;"

As I have found earlier, the transaction in this case was in fact a loan transaction and it is obvious that as long as he gets his $40 interest monthly the defendant's father was not anxious that the loan be repaid within the period of 8 months and from the facts that he had continued to receive the $40 p.m. till October 1965, long after the expiry of that period and that the memorandum of transfer in respect of the land which was executed on July 14, 1959 was not registered by him in the Registry until March 24, 1962 I am satisfied that time was not of the essence of the contract.

In *Wong Kup Sing* v. *Jeram Rubber Estates Ltd.*[8] the plaintiff claimed specific performance of an agreement of sale of a rubber estate entered into between him and the defendants or in the alternative for damages, or rescission of the contract. Under the agreement time had been made the essence of the contract, but at the request of the plaintiff the defendants had consented to extension of time for completion on six separate occasions. Eventually the defendants through their solicitors wrote to the plaintiffs on November 15, 1967, insisting that the purchase be completed on the same day. As completion was not made on that day, they wrote to the plaintiff to say that the agreement was terminated. Subsequently the plaintiff offered to complete the contract but the defendants refused, taking the view that the contract was at an end. It was held among other things that:

"(1) once the time for completion was allowed to pass and the parties went on negotiating, then time was no longer of the essence of the contract and the defendants must give reasonable notice of their intention to abandon the contract if the balance is not paid;"

Thus in this case even if time was originally of the essence of the contract it had been allowed to pass and the conduct of the parties clearly showed that it was no longer so.

The plaintiff is therefore entitled to repurchase the land on payment of the sum of money lawfully due to the defendant.

Although a memorandum of transfer cannot be considered as anything else but an absolute sale in respect of the land the same does not apply to the purported sale of with an option to re-purchase moveable property.

In *Wok binte Hussein* v. *Harchand Singh*[9] the plaintiff had executed two documents, one purporting to assign her two movable houses to the defendant and the other giving the plaintiff the right to repurchase the two houses by instalments. The plaintiff's case was that the documents together amounted to a bill of sale and that since they were not in the prescribed form and were not registered the transaction was wholly void. To this counsel for the defendant submitted that the first document amounted to an absolute assignment and that the second document was an agreement to repurchase by instalments, and that the court cannot go behind these documents which speak for themselves. It was held that:

"following the judgment of Lord Esher, M.R., in *Madell* v. *Thomas & Co.*[10] the main object of the Bill of Sale Enactment is to protect borrowers against lenders and if documents appear to be one thing, when they really mean something different, and which are not true descriptions of what the parties to them are really doing, this court will go through the documents in order to arrive at the truth.

From the evidence adduced as to the circumstances of the transaction, the two documents amount to a bill of sale."

Under section 3 of the Bills of Sale Ordinance No. 30 of 1950

" 'bill of sale' also includes, as regards any personal chattels which may be seized or taken thereunder, every attornment, instrument or agreement whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only, but does not include or extend to any mortgage or charge of any estate or interest in any land which the mortgagee or chargee being in possession demises to the mortgagor or chargor as his tenant at a fair and reasonable rent;"

I am satisfied that the two documents in this case, P1 and the agreement, together amounted to a bill of sale and since they have not complied with the provisions of the said Ordinance they are void under section 4 of the said Ordinance. As such the plaintiff would be entitled to prayers 2 and 4 and part of prayer 5 in respect of the premises.

In the event I give judgment for the plaintiff as prayed in prayer 5 in respect of the land subject to the payment within one month from to-day by the plaintiff to the defendant of $1,000 plus $20 per month from October 1965 to May 1967 (*i.e.* $400) making a total of $1,400 and in prayers 2, 4 and 5 in respect of the premises. I also order the defendant to pay the plaintiff's costs.

The defendant's counterclaim is dismissed with costs.

Judgment for the plaintiff.

Solicitors: *Wilson & Co.; Dato' Bijaya & Co.*

ABU BAKAR BIN NAZMEER v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) July 2, 1970]

[Penang — Criminal Appeal No. 16 of 1970]

Customs and Excise — Attempted fraudulent evasion of customs duty — Failing to declare dutiable goods — Fraudulent intent — Customs Ordinance, 1952, ss. 97 and 99.

Evidence — Statement to customs officers — Whether admissible without caution.

This was an appeal by the appellant against his conviction on two charges under the Customs Ordinance, 1952, of fraudulent evasion of customs duty and of failing to declare dutiable goods. On appeal it was argued *inter alia* (1) that the statement of the appellant to the customs officers was wrongly admitted in evidence as no caution had been administered to him before he made the statement; (2) that the learned president had misdirected himself in law and in fact in holding that the prosecution had proved fraudulent intent.

Held, dismissing the appeal: (1) the statement made by the appellant to the customs officer was admissible in evidence, despite the failure to administer the caution;

(2) the conviction of the appellant on both charges must be upheld, because of his own admission that he had the goods, his failure to have the goods for production on arrival for the payment of customs duty; his failure to comply with the provisions of the Customs Ordinance as to the declaration of dutiable goods and the fact that the goods were concealed.

Cases referred to:-

(1) *Chye Ah San* v. *R.* [1954] M.L.J. 217.

(2) *Public Prosecutor* v. *Teh Lye Tong* (1958) 3 M.C. 208.

(3) *Public Prosecutor* v. *Tay Yam Peng* [1951] M.L.J. 144.

(4) *Chan Wai-Keung* v. *R.* [1967] 1 All E.R. 948.

(5) *R.* v. *Ovenell* [1968] 1 All E.R. 933.

(6) *Ibrahim* v. *The King* [1914] A.C. 599.

(7) *Godinho* v. *R.* 7 Cr. App. R. 12.

(8) *Public Prosecutor* v. *Amat bin Ali & Anor.* [1955] M.L.J. 74.

(9) *Muthusamy* v. *Public Prosecutor* [1948] M.L.J. 57 at p. 58.

CRIMINAL APPEAL.

Lim Ewe Hock for the appellant.

Azmel bin Haji Ma'amor (Deputy Public Prosecutor) for the respondent.

Ong Hock Sim J. (delivering oral judgment): The appellant, a chief inspector who had more than 18 years of service since the 9th June, 1951 and had a good record of service and was also the recipient of a letter of commendation by the Chief Police Officer, Penang, has unfortunately in this case been convicted on two charges under the Customs Ordinance, 1952, the first of which dealt with attempted fraudulent evasion of customs duties amounting to $122 on one Akai tape-recorder, model 1710, serial No. L516681 and 3 bundles of dyed cotton fancy cloth found concealed underneath rattan shields, steel helmets and boxes of ammunition (equipment used by the police riot squad) in vehicle BK. 2892 and secondly of an offence of failing to declare as required by section 99 of the Customs Ordinance the Akai tape-recorder. On these two charges he was convicted by the learned president and fined $1,220 being the minimum which could be imposed, in default 8 months' imprisonment and on the second charge $300 in default one month's imprisonment.

It is apparent from the record that it had come to the knowledge of the customs that these police vehicles had been utilised by unscrupulous traders and merchants to evade duties in the belief that officers in police vehicles would not be subject to the rigid inspection or check that would otherwise have been conducted at the customs checkpoint or else be allowed to go through without any but superficial check. In connection with this present case, it was obvious and the information showed that the customs authorities were on the lookout for some three days prior to the day of the incident. On this day, the 14th June 1967, the appellant was the officer-in-charge of the convoy consisting of three trucks and one landrover. They had fulfilled their duties in Penang and were returning to their base at Kepala Batas. The appellant appealed and in his petition listed 13 grounds of appeal.

The first ground dealt with the failure to administer a caution under the Judge's Rules to the appellant. Great reliance was placed in the lower court upon the authority of *Chye Ah San* v. *Regina*[1] which was the judgment of Spenser Wilkinson J. where he referred to section 24 of the Evidence Ordinance and the Judges' Rules. That case was under the Excise Enactment, section 51 of which reads:

"51. Every person required by a Senior Excise Officer to give any information on any subject which it is such officer's duty to enquire into under this Enactment and which information it is in his power to give shall be legally bound to give such information."

and it was contended that in the light of that section none of the statements were admissible, offending, as he said, against the well known principle of *nemo tenetur seipsum accusare*, which in English means that no man should be made to accuse himself. Counsel for the appellant in the court below, who is not the counsel on this appeal, further contended that the warning before the written statement was taken amounted to a threat, inducement or pressure rendering the statement inadmissible under the provisions of section 24 of the Evidence Ordinance. Section 51 of the Excise Enactment is in *pari materia* with section 97 of the Customs Ordinance, 1952 which reads:

"97. Every person required by the proper officer of customs to give information or produce any documents on any subject into which it is such officer's duty to enquire under this Ordinance and which it is in such person's power to give shall be legally bound to give such information or produce such documents."

The then Attorney-General at the time of the *Chye Ah San* case regretted that that decision was not taken up on reference to the Court of Appeal for a decision as to its correctness. As the learned judge himself said:

"The statement in this case was undoubtedly made to a person in authority but in no sense can a legal obligation to make a statement and to tell the truth be considered a threat, nor can an avoidance of prosecution for not complying with the law be considered a gain within the meaning of the section. In my opinion section 24 does not apply to the statement in this case."

Following that case, the next opportunity came in 1958 in the case of *Public Prosecutor* v. *Teh Lye Tong*[2] when I, as deputy public prosecutor, appealed against the acquittal of the accused by the learned president who ruled inadmissible three oral statements severally made by the accused to two revenue officers. As Rigby J., (as he then was), said:

"The appeal is one of some substantial and practical importance involving the admissibility or otherwise of certain oral statements made by the accused, after his detention, severally to two revenue officers."

It was then held that revenue officers are not police officers within the meaning of sections 25 and 26 of the Evidence Ordinance and therefore a confession or admission of guilt made by a suspect or accused person to a revenue officer is not *ipso facto* rendered inadmissible in evidence by the provisions of those sections (*Public Prosecutor* v. *Tay Yam Peng*[3]). It was further held that the failure of the revenue officer or officers to caution the accused did not render the subsequent statement inadmissible because there had been no inducement or threat to the accused. Another ruling was, and I need not emphasize, that there was no reason why customs and excise officers should not ask questions from persons whether suspected or not from whom they think useful information can be obtained and there is nothing in law to prevent the answers given to them by a person subsequently accused of an offence from being used in evidence provided the court is satisfied that those answers were voluntarily given.

In [1964] 1 All E. R. 237 appears the following Practice Note headed: *Criminal Law — Evidence — Admissibility — Confessions, answers and statements to the police — Judges' Rules.* Lord Parker C.J. announced the revised edition of the Judges' Rules dealing with the admissibility in evidence at the trial of any person of answers and statements made by him to police officers. These rules are designed to secure that only answers and statements which are voluntary are admitted in evidence against their makers and to provide guidance to police officers in the performance of their duties.

In *Chan Wai-Keung* v. *Reginam,*[4] a Privy Council decision where the appellant had been convicted of murder and the evidence against him consisted of two written statements of confession made by him to the police after caution, it was stated therein that it was not necessary that the jury must be satisfied beyond reasonable doubt as to the voluntariness of the statements before they can be given consideration. We have been referred by learned counsel to the case of *R.* v. *Ovenell*[5] and I would just refer to the catch words in that case: *Criminal Law — Evidence — Admissibility — Confession — Inducement — Evidence of admission made at interview with investigating officers of customs and excise, statement made without caution being administered — Whether statement induced by hope of advantage — Judges' Rules, r.2.* It was held in that case at page 934:

(i) in deciding in criminal cases on the admissibility of an accused's admission in evidence, the question of its admissibility, and for this purpose the question whether it satisfied the test of voluntariness, was a question for the judge to decide.

(ii) where a statement had been made without the caution envisaged by the Judges' Rules in circumstances in which those rules would have necessitated a caution, a trial judge had a discretion whether the statement should be admitted or not; in the present case the discretion had been judicially and properly exercised.

Per Curiam: the Judges' Rules are directed to the police *and to no one else,* though it is understandable that investigation officers of other services might be thought to be comparably placed with police officers.

In this case reference was also made to a passage by Lord Summer in *Ibrahim* v. *The King*[6] to the effect "no statement made by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it is not obtained from him either by fear or prejudice or hope of advantage exercised by or held by a person in authority."

I have, in the case of *Teh Lye Tong,* which I have already cited earlier, referred to the case of *Godinho* v. *Rex*[7] which was accepted by Rigby J. that "a confession induced merely by a hope of pardon formed in an accused person's own mind is admissible in evidence." A confession made to, but not induced by, a person in authority (other than, of course, a police officer) is equally admissible in evidence. The inadmissibility of a confession in such circumstances depends on the inducement proceeding from the person in authority. Support for this proposition can be found in the case of *Public Prosecutor* v. *Amat bin Ali & Anor.*[8] In that case the prosecution put in a statement made by the accused which was rejected by the lower court on the ground that the statement was made to the fuelling superintendent who supervised the discharge of the fuel from the tank to the storage tank, and, on appeal, the magistrate was overruled since there had been no suggestion that the statement offended section 24 of the Evidence Ordinance by reason of inducement, threat or promise. These deal therefore with grounds (1) and (2) of the appeal and I hold that despite the failure to administer the caution which is frankly admitted by the prosecution witnesses in this case, the statements which were made by the appellant were admissible in evidence.

On ground (3) that is the question of "a trial within a trial", there does not appear on the record any ground called for in the first instance for this, as there had been at the time no challenge by the appellant that the statements made by him were inadmissible on any of the grounds specified in section 24. Repeatedly, evidence was called where the person recording the statement testified to the following effect:

"I did not induce defendant in any way. I did not threaten defendant. I did not promise anything. I put the question because I wanted to find out from him whether the defendant or any other member of the F.R.U. had any dutiable goods to declare."

How far this has prejudiced the appellant in obtaining a fair trial, I am not prepared to make a ruling as upon the whole of the record I am not satisfied that it has, if it has been wrongly done, resulted in any miscarriage or failure of justice.

Ground (4) was apparently cut short by the appellant's counsel, which is, that the learned president misdirected himself in law and in fact in holding that the prosecution had proved fraudulent intent. On this point, I would only like to say that the Butterworth customs checkpoint has two bays and non-dutiable goods conveyed by a vehicle will go to the non-dutiable bay where the vehicle is registered and a simple form is filled up whereas a vehicle conveying dutiable goods has to go to the customs warehouse for examination and they normally have to prepare and fill up prescribed forms, even before arriving. At this stage, reliance was placed by the prosecution on section 99 of the Customs Ordinance, 1952 which says:

"99(1) Notwithstanding anything in this Ordinance contained, every passenger or other person arriving in or leaving the

Federation shall declare all dutiable or prohibited goods in his possession, either on his person or in any baggage or in any vehicle, to the proper officer of customs, and if he fails so to do such goods shall be deemed to be uncustomed goods."

Section 99 of the Customs Ordinance does not specify what time he must declare. Where no time was prescribed the Interpretation and General Clauses Ordinance, 1948 provides in section 38:

"38. Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed and as often as the prescribed occasion arises."

In this case, however, I do not think it necessary to have recourse to that because the Customs Ordinance under section 75 has clearly made provision for them. The proviso to section 75 deals with declaration of dutiable goods. I only need read the proviso to section 75(1) which says:

"Provided that in the case of goods imported by road such declaration shall be made *on arrival* of such goods at the place of import."

I think that in effect answers ground (4).

The learned counsel has abandoned ground (5) with regard to the failure to offer to the appellant certain prosecution witnesses. From the record it appears that he was not in any way hindered from so calling, and did in fact call some members of the convoy on the day in question. In any event, the law is clear that the matter is one for the prosecution to decide whether evidence is adequate or sufficient for it to produce in proof of the prosecution case and whom to call. Any failure on the part of the prosecution to call any material witness can only result in the failure of the prosecution to observe its first and primary duty in any trial of satisfying the court of the guilt of the accused beyond reasonable doubt and is certainly more than likely to result in the case being thrown out.

Grounds (6), (7), (8), (9), (10) and (11) dealing with the impeachment of defence witnesses on the application of the learned deputy public prosecutor and allowed by the learned president, without objection from counsel for the appellant in the lower court, seem to me to be without merit or substance. From the record, it appears to me that the learned deputy public prosecutor seems to labour under the false impression that everything that is recorded in a statement must be replied in the same form or substantially the same form; otherwise he considers it a discrepancy. In the case of *Muthusamy* v. *Public Prosecutor*[9] on the question of dealing with the subject of impeachment, the court said:

"The proper way to apply the sections is this. On the request of either side, the court reads the former statement. If there is no serious discrepancy the court so rules and no time is wasted. The first necessity is to read it with the confident expectation that it will be different from the evidence but looking judicially to see whether the difference really is so serious as to suggest that the witness is unreliable.

Differences may be divided into four classes:—

(a) Minor differences, not amounting to discrepancies;

(b) Apparent discrepancies;

(c) Serious discrepancies;

(d) Material discrepancies.

Minor differences are attributable mainly to differences in interpretation and the way in which the statement was taken and sometimes to differences in recollection. A perfectly truthful witness may mention a detail on one occasion and not remember it on another. A mere omission is hardly ever a discrepancy."

As I see it, the impeachment sought by the learned deputy public prosecutor was a sheer waste of the time of the court. It never touched on the question of what goods were claimed by the appellant and what was the duty payable thereon. It sought to bring in evidence that certain people were within sight or sound for the purpose of merely recording whether P.W. 1 and P.W. 3 asked, and repeatedly asked, the appellant whether he had dutiable goods to declare and the appellant replied there was nothing other than the regular equipment and personal belongings. In my view, it was the duty of the learned president himself to decide whether he believed P.W. 1, P.W. 3 and P.W. 4. It was the duty of the learned president to examine and to consider any explanation which the appellant gave in reply to the testimony of these two witnesses, who seem directly to implicate him in the offence. It is on record however and since the appellant had the benefit of counsel two items were claimed by the appellant as belonging to him, one an Akai tape-recorder and 3 bundles of dyed cotton fancy cloth, duty on which was $122. The appellant made a statement from the dock, which he was fully entitled to do, and if I may briefly refer to his statement for what it is worth and for the weight and consideration which I should place on it in the light of the record, he says this:

"On reaching PW.1 I was asked whether I was the officer in charge. I replied 'Yes' and then he asked me as to whether I had anything to declare. I replied I had personal effects, i.e. a tape recorder and certain other goods in the stores vehicle."

At page 64 of the record, the appellant had told Mr. Boon that he had some personal effects, a tape recorder and certain other things in the 2nd vehicle. Further down he said: "As we came out of the office I saw the command vehicle BJ 3257 and the stores vehicle BK 2892 out of the bay and two persons in civilians taking down the goods, equipments and all this was stacked beside the lorry. I then immediately went and identified my goods and informed Che Osman who was then there the particulars of my goods and whether I could pay tax for it." In the light of his own admission that he had goods, in the light of the failure to have these goods for production on arrival for the purpose of payment of customs duty, in the absence of a failure to comply with the provisions of section 99 as to the declaration of dutiable goods, in the light of the fact that these were concealed — found as a fact by the learned president — I have with the greatest regret considering the past record of the appellant, to uphold the conviction of the appellant on both charges. I can do no less in connection with the fine on the first charge because it is the minimum that could be imposed. Persons in positions like the appellant are exposed unfortunately to temptations by unscrupulous traders and merchants who seek to make gain by utilising their services for wrongful and illegitimate gain. In regard to the second charge, I will in this case reduce the fine to $100 having regard to the amount of duty being only $122.

With the information on record it is clear that not only the appellant was personally involved in this smuggling but also all members of the convoy had a hand in it. I should not however mete the penalty on him solely because he was the officer-in-charge of the convoy. I note the list of goods found in BK 2892 amount to the value of $5,399.40 on which duty of $2,908.86 was payable. It is obvious that the appellant did not have sufficient resources but the traders and merchants have unfortunately been allowed to go scot-free since the appellant and the other members of the convoy chose to keep silent and not inform the police and the customs of these unscrupulous scoundrels. Under section 180 of the Criminal Procedure Code the learned deputy public prosecutor can stay proceedings on the third charge which would amount to an acquittal unless the appellant successfully appeals against my judgment.

On grounds (12) and (13), which latter ground was admitted by me on the day of the hearing, they complained of several unsatisfactory features in the trial before the learned president. I have already dealt in the early part of my judgment with most of the grounds and I say again that I am satisfied if there were any unsatisfactory features as contended by counsel for the appellant, I can find in this case no ground for believing that these have occasioned a failure of justice. I therefore confirm the conviction and fine of the appellant on the first charge and vary the fine on the second charge to one of $100. The appeal is dismissed.

Appeal dismissed.

TEOH KHOON LIM v. LIM AH CHOO & ANOR.

[F.C. (Azmi L.P., Suffian and Ali F.JJ.) July 3, 1970]

[Penang — Federal Court Civil Appeal No. X. 117 of 1969]

Negligence — Vehicle driven by person to whom car has been loaned by owner — Agency — Whether owner liable for negligent driving of borrower.

In this case the learned trial judge had found that one So Pek and his son were killed by the negligent driving of Mahmood bin Hashim, the first defendant (second respondent in this appeal) and awarded damages both against him and the owner of the vehicle, the second defendant (appellant herein). The second defendant had lent the car to the first defendant for the purpose of conveying the first defendant's meat. The second defendant appealed.

Held, allowing the appeal: the evidence in this case showed that the first defendant used the car for his own benefit and on his own concern and therefore the second defendant could not be made liable for the negligence of the first defendant.

Cases referred to:-

(1) *E.A. Long* v. *Wing Chiu Wah* [1957] M.L.J. 163.

(2) *Rambarran* v. *Gurrucharran* [1970] 1 All E.R. 749.

(3) *Manawatu County* v. *Rowe* [1956] N.Z.L.R. 78.

(4) *Barnard* v. *Sully* (1931) 47 T.L.R. 557.

(5) *Hewitt* v. *Bonvin* [1940] 1 K.B. 188.

The following additional cases were cited in argument: *Ormord & Anor.* v. *Crosville Motor Services Ltd. & Anor.* [1953] 2 All E.R. 753, 754; *Lee Chong* v. *Tan Kwee Low & Anor.* [1961] M.L.J. 98, 104; *Parker* v. *Miller* (1926) 42 T.L.R. 408, 409; *Samson* v. *Aitchison* [1912] A.C. 844, 850.

FEDERAL COURT.

Khoo Eng Chin for the appellant.

A. Jayadeva for the 1st respondent.

2nd respondent in person.

Azmi L.P.: The learned trial judge found that one So Pek and his son Saw Ah Teong were killed by the negligent driving of Mahmood bin Hashim, the first defendant and awarded damages both against him and the owner of the vehicle, the second defendant.

At the trial, the first defendant did not file his defence nor did he attend it as a party to the suit. He was, however, subpoenaed by the second defendant and gave evidence on behalf of the latter. At the hearing second defendant did not dispute the question of negligence and with agreement of both counsel the court proceeded to decide the only issue as to whether the first defendant was driving the car as the second defendant's servant or agent at the time of the accident.

The second defendant was the owner of the car and he loaned it to the first defendant for the purpose of conveying first defendant's meat. In the course of their evidence the learned judge found that they contradicted each other on certain facts which in the view of the trial judge were important. These contradictions may be briefly stated to be in reference to the question whether the first defendant had also loaned his car to the second defendant previously and whether as a fact they were old friends. The learned judge finally on this question came to the following conclusions: —

"There are other inconsistencies in the testimony of both the defendants in this action which have led me to believe that first defendant was a mere acquaintance of the second defendant, and that what was represented as a gratuitous loan of the car between friends of long standing was in fact a surreptitious hiring.

I am therefore satisfied, on the balance of probabilities that the car was, by this fact of hiring, being used, at the time of the accident for a purpose in which the second defendant had both interest and concern."

The second defendant appealed against that finding.

Before us it was argued that the learned judge was wrong to have drawn an inference that the gratuitous loan of the car by the second defendant to the first defendant was in fact a surreptitious hiring when there was no evidence before him for such an inference to be drawn. And secondly even if he was right in his inference that the loan of the car was in fact a surreptitious hiring, he was wrong in law to have held that the car was, by that fact of hiring, being used at the time of the accident, by the first defendant for the purpose in which the second defendant had both interest and concern.

In his judgment the learned judge cited the following passage from the judgment of Rigby J. (as he then was) in *E. A. Long* v. *Wong Chiu Wah*: [1]

"In my view the owner of a hired car who hires his car for reward to another party with the full knowledge that the